

1 BRUCE A. KILDAY, ESQ., SB No. 066415

Email: Bkilday@akk-law.com

2 JOHN A. WHITESIDES, SB No. 125611

Email: Jwhitesides@akk-law.com

3 SUSAN A. DeNARDO, SB No. 235166

Email: Sdenardo@akk-law.com

4 **ANGELO, KILDAY & KILDUFF**

5 Attorneys at Law

6 601 University Avenue, Suite 150

Sacramento, CA 95825

7 Telephone: (916) 564-6100

8 Telecopier: (916) 564-6263

9 BRIEN J. FARRELL, City Attorney, SB No. 088318

Email: BFarrell@ci.santa-rosa.ca.us

10 CAROLINE A. FOWLER, Assistant City Attorney, SB No. 110313

Email: CFowler@ci.santa-rosa.ca.us

11 City of Santa Rosa

12 100 Santa Rosa Avenue, Room 8

Santa Rosa, California 95404

13 Telephone: (707) 543-3040

14 Facsimile: (707) 543-3055

15 Attorneys for Defendants CITY OF SANTA ROSA, BRAD CONNERS (sued herein as BRAD  
16 CONNORS), OFFICER JENEANE KUCKER (sued herein as OFFICER HOOD), and LT. JON  
17 FEHLMAN (sued herein as JOHN FELMAN)

18 **IN THE UNITED STATES DISTRICT COURT**

19 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

20 ORALEE ANDERSON-FRANCOIS,

) Case No.: C08-00724 WHA

21 Plaintiff,

) **ANSWER TO COMPLAINT AND**

) **DEMAND FOR JURY TRIAL**

22 vs.

23 COUNTY OF SONOMA, CITY OF SANTA )

24 ROSA, JERRY NEWMAN, BRAD )

25 CONNORS, OFFICER HOOD, JOHN )

26 FELMAN, and Does 1-25, )

27 Defendants. )

28 )

1 Defendants CITY OF SANTA ROSA, BRAD CONNERS, OFFICER JENEANE  
2 KUCKER, and JON FEHLMAN answer the Complaint as follows:

3 1. Answering paragraphs 1 and 2, Defendants admit that this Court has jurisdiction  
4 over the allegations in the complaint, but deny that these answering Defendants caused the  
5 deprivation of any of Plaintiff's rights.

6 2. Answering paragraph 3, Defendants admit that venue is proper in the Northern  
7 District, but deny that these answering Defendants caused the deprivation of any of Plaintiff's  
8 rights.

9 3. Answering paragraphs 5, 6, 9 and 10, Defendants admit the allegations therein  
10 contained.

11 4. Answering paragraph 4, 7 and 8, Defendants do not currently have sufficient  
12 information or knowledge upon which to admit or deny the allegations in these paragraphs and,  
13 upon such lack of information and belief, deny each and every allegation therein contained.

14 5. Answering paragraph 11, Defendants admit the City of Santa Rosa, in conjunction  
15 with the laws of the State of California and the United States of America, establishes policies and  
16 practices for the Santa Rosa Police Department. With the exception of said specific admission,  
17 Defendants deny the balance of the allegations in said paragraph.

18 6. Answering paragraph 12, Defendants deny each and every allegation therein  
19 contained.

20 7. Answering paragraph 13, Defendants admit that Detective Brad Connors was a  
21 police officer, acting under color of state law, but deny the balance of the allegations contained  
22 in said paragraph, including any inference that his actions violated the Constitutional rights of  
23 the Plaintiff.

24 8. Answering paragraph 14, Defendants admit that the officer formerly known as  
25 Hood was a police officer, acting under color of state law, but deny the balance of the allegations  
26 contained in said paragraph, including any inference that his actions violated the Constitutional  
27 rights of the Plaintiff.

28 9. Answering paragraph 15, Defendants admit that Jon Fehlman was a sergeant in

1 the Santa Rosa Police Department during the time alleged in the Complaint and has the  
2 supervisorial authority of that rank within the Santa Rosa Police Department. With the exception  
3 of said specific admission, Defendants deny each and every allegation in the balance of the  
4 paragraph.

5 10. Answering paragraphs 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31,  
6 32, 33, 34, 35, 36, 37, 38 and 39, Defendants do not currently have sufficient information or  
7 knowledge upon which to admit or deny the allegations in these paragraphs and, upon such lack  
8 of information and belief, deny each and every allegation therein contained.

9 11. Answering paragraph 40, Defendants admit that Sgt. Fehlman had a conversation  
10 with Newman and another individual about the Plaintiff in late December 2005. Defendants  
11 deny that Sgt. Fehlman sent any police officers to assist CPS, and further deny the balance of the  
12 allegation in said paragraph.

13 12. Answering paragraphs 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56  
14 and 59, Defendants do not currently have sufficient information or knowledge upon which to  
15 admit or deny the allegations in these paragraphs and, upon such information and belief, deny  
16 each and every allegation therein contained.

17 13. Answering paragraph 57, Defendants state that Officer Hood was present only to  
18 provide transportation and therefore deny that she participated in any joint agreement.  
19 Defendants admit that Detective Conners observed interviews and talked with Newman about the  
20 removal of the minors. Defendants admit that Sgt. Fehlman was informed of the decision to  
21 remove the minors. With the exception of said specific admissions, Defendants deny each and  
22 every allegation contained in the balance of the paragraph.

23 14. Answering paragraph 58, Defendants admit that Detective Conners participated in  
24 the removal of the minors, without a warrant, based on the belief that the minors were in  
25 imminent risk of serious injury. With the exception of specific said admissions, Defendants deny  
26 the balance of the allegations in said paragraph.

27 15. Answering paragraphs 60, 61, 62, 63, 64, 65 and 66, Defendants deny each and  
28 every allegation contained in said paragraphs.

**AS AND FOR FURTHER, SEPARATE AND DISTINCT  
AFFIRMATIVE DEFENSES THERETO, DEFENDANTS  
ALLEGE AS FOLLOWS:**

---

1                   1.     That at all times mentioned in the Complaint on file herein, and  
2 immediately prior thereto, Defendants, and each of them, acted in good faith;.

3  
4                   2.     Defendants contend that they cannot fully anticipate all affirmative  
5 defenses that may be applicable to this action based upon the conclusionary terms used in  
6 Plaintiff's Complaint. Accordingly, Defendants expressly reserve the right to assert additional  
7 affirmative defenses if and to the extent that such affirmative defenses become applicable;

8                   3.     That Plaintiff's claims are barred by the doctrines of collateral estoppel  
9 and/or res judicata;

10                  4.     Defendants assert that if Defendants, or any of them, are adjudged,  
11 decreed, or otherwise determined to be liable to Plaintiff, then in that event, Defendants will be  
12 entitled to apportion the degree of its fault or responsibility for said incident attributable to the  
13 Plaintiff or to any other defendants named herein or yet to be named. The amount of damages  
14 attributable to these answering Defendants is to be abated, reduced, or eliminated to the extent  
15 that the Plaintiff's own negligence, or the negligence of any other defendant, contributed to the  
16 Plaintiff's claimed damages, if any there were. This apportionment of damages is to be  
17 administered in accordance with the principles of equity and pursuant to the doctrine of  
18 comparative negligence and pursuant to Civil Code Section 1431.2;

19                  5.     Defendants assert that the allegations contained in Plaintiff's Complaint  
20 do not rise to the level of a constitutional violation;

21                  6.     Defendants, and each of them, assert that Plaintiff was given, or had  
22 available to her, available due process for each of the alleged deprivations of his constitutional  
23 rights and have therefore failed to state a claim upon which relief can be granted under 42 USC  
24 Section 1983;

25                  7.     Defendants contend that the Plaintiff has failed to mitigate her damages, if  
26 any there are;

1           8. Defendants contend that the Complaint, and each alleged cause of action  
2 therein, failed to allege facts sufficient to constitute a cause of action against these answering  
3 Defendants.

4           9. The Complaint fails to state a claim against these answering Defendants,  
5 or any of them, upon which relief can be granted;

6           10. Defendants assert that they are immune from liability as a result of  
7 executive and/or legislative and/or judicial immunity under the common law, United States  
8 statutes, and the opinions of the State and Federal Courts interpreting these laws;

9           11. Defendants claim and plead the immunities from liability for any and all  
10 injuries and damages alleged in the Complaint on file herein, the defenses and all rights granted  
11 to them, and each of them, by virtue of the provisions of California Government Code Sections  
12 810-996.6, inclusive;

13           12. The Defendants, and each of them, are immune from liability by reason of  
14 the provisions of the California Penal Code, including but not limited to Sections 834a, 835,  
15 835a, 836, 836.5, 847 and Civil Code Section 43.55;

16           13. At all times mentioned in the Complaint on file herein, and immediately  
17 prior to, Defendants, and each of them, acted with probable cause;

18           14. Defendants claim all defenses and immunities provided by the United  
19 States Code Section sued upon by the Plaintiff and any code sections related thereto or cases  
20 coming thereunder;

21           15. Defendants contend that they relied, reasonably and in good faith, on  
22 information and assertions provided to them by representatives of Child Protective Services;

23           16. At all times mentioned in the Complaint on file herein, and immediately  
24 prior thereto, Defendants, and each of them, acted reasonably.

25           17. The individual answering Plaintiff neither knew nor had reason to know  
26 that their acts and/or omissions, as alleged in the Complaint, would violate any clearly  
27 established federal right on the part of Plaintiff, entitling each of them to qualified good faith  
28 immunity.

**WHEREFORE, DEFENDANTS PRAY FOR JUDGMENT AS FOLLOWS:**

1. That Plaintiff take nothing by his complaint;
2. That Plaintiff's complaint be dismissed in its entirety with prejudice;
3. That Defendants be awarded cost of suit incurred in this action;
4. That Defendants be awarded attorney's fees; and
5. For such other and further relief as the Court may deem just and proper.

Dated: May 5, 2008

ANGELO, KILDAY & KILDUFF

*/s/ Bruce A. Kilday*

By: \_\_\_\_\_

BRUCE A. KILDAY

JOHN A. WHITESIDES

SUSAN A. DeNARDO

Attorneys for Defendants CITY OF

SANTA ROSA, BRAD CONNERS,

OFFICER JENEANE KUCKER , and

LT. JON FEHLMAN

Dated: May 5, 2008

CITY OF SANTA ROSA

*/s/ Caroline A. Fowler*

By: \_\_\_\_\_

BRIEN J. FARRELL

CAROLINE A. FOWLER

Attorneys for Defendants CITY OF

SANTA ROSA, BRAD CONNERS,

OFFICER JENEANE KUCKER , and

LT. JON FEHLMAN

**DEMAND FOR JURY TRIAL**

Defendants CITY OF SANTA ROSA, BRAD CONNERS, OFFICER JENEANE KUCKER, and JON FEHLMAN hereby respectfully request a jury trial in the above-referenced matter.

Dated: May 5, 2008

ANGELO, KILDAY & KILDUFF

*/s/ Bruce A. Kilday*

By: \_\_\_\_\_

BRUCE A. KILDAY

Attorneys for Defendants CITY OF  
SANTA ROSA, BRAD CONNERS,  
OFFICER JENEANE KUCKER , and  
LT. JON FEHLMAN

Dated: May 5, 2008

CITY OF SANTA ROSA

*/s/ Caroline A. Fowler*

By: \_\_\_\_\_

BRIEN J. FARRELL

CAROLINE A. FOWLER

Attorneys for Defendants CITY OF  
SANTA ROSA, BRAD CONNERS,  
OFFICER JENEANE KUCKER , and  
LT. JON FEHLMAN